

CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1669

Citations Affected: IC 4-13.6-8-7; IC 20-20-37.4; IC 36-1.

Synopsis: Geothermal conversion loans and energy efficiency. Conference committee report to EHB 1669. Establishes the geothermal conversion revolving fund (revolving fund) for the purpose of making loans to school corporations that: (1) install a geothermal heating and cooling system in a new facility; or (2) install a geothermal heating and cooling system that replaces a conventional heating and cooling system. Provides that the revolving fund is administered by the Indiana bond bank (bank). Requires the bank to establish a written procedure for providing loans from the revolving fund to school corporations. Specifies that a loan from the revolving fund may not exceed the difference between: (1) the cost of installing a geothermal heating and cooling system; and (2) the cost of installing a conventional heating and cooling system. Requires a school corporation to enter into a loan agreement with the bank before receiving a loan from the revolving fund. Requires the bank to report annually to the budget committee concerning the projects funded with loans from the revolving fund. Provides that the maximum term of a guaranteed energy cost savings contract or utility efficiency program is 20 years. (Current law provides for maximum terms of 10 and 15 years.) Amends the statute governing local public works projects to state that a political subdivision or its agencies may: (1) participate in a utility efficiency program or may enter into a guaranteed savings contract as provided by law; and (2) enter into a design-build contract as permitted by law instead of awarding a public works contract. Provides that a "conservation measure" includes installation of insulation in a political subdivision's facility. (Under current law, the definition of "conservation measure" includes only insulation of school facilities.) **(This conference committee report is based on the Senate-passed version of HB 1669 (printed April 10, 2009) (SECTION 2), and differs by: (1) making the Indiana bond bank the administrator of the geothermal conversion revolving fund; and (2) adding substantially all of the Senate-passed version of HB 1254 (printed April 10, 2009) (SECTIONS 1 and 3 through 6). However, the report does not include the provision in HB 1254 that would waive the application of public work statutes to political subdivisions for certain projects that cost less than \$400,000.)**

Effective: July 1, 2009.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1669 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning state
- 3 and local administration.
- 4 Delete everything after the enacting clause and insert the following:
- 5 SECTION 1. IC 4-13.6-8-7 IS AMENDED TO READ AS
- 6 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) After reviewing
- 7 the proposals submitted and after receiving a recommendation from the
- 8 budget committee, the department may approve an energy cost savings
- 9 contract with a qualified provider that best meets the needs of the
- 10 governmental body if the department reasonably expects the cost of the
- 11 qualified energy savings project recommended in the proposal would
- 12 not exceed the amount to be saved in:
- 13 (1) energy costs;
- 14 (2) operational costs; or
- 15 (3) both energy and operational costs;
- 16 not later than ~~ten (10)~~ **twenty (20)** years after the date installation is
- 17 completed if the recommendations in the proposal are followed.
- 18 (b) An energy cost savings contract must include a guarantee from
- 19 the qualified provider to the state that:
- 20 (1) energy cost savings;
- 21 (2) operational cost savings; or
- 22 (3) both energy and operational cost savings;

will meet or exceed the cost of the qualified energy project not later than ~~ten (10)~~ **twenty (20)** years after the date installation is completed.

SECTION 2. IC 20-20-37.4 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 37.4. Geothermal Conversion Revolving Fund

Sec. 1. As used in this chapter, "fund" refers to the geothermal conversion revolving fund established by section 3 of this chapter.

Sec. 2. As used in this chapter, "geothermal heating and cooling system" means a heating and cooling system that uses the natural temperature of the earth to generate heating and cooling.

Sec. 3. The geothermal conversion revolving fund is established for the purpose of making loans to school corporations that:

- (1) install a geothermal heating and cooling system in a new facility; or
- (2) install a geothermal heating and cooling system that replaces a conventional heating and cooling system.

Sec. 4. (a) The fund shall be administered by the Indiana bond bank. The expenses of administering the fund shall be paid from money in the fund.

(b) The fund consists of the following:

- (1) Money appropriated by the general assembly.
- (2) The repayment proceeds of loans made to school corporations from the fund.
- (3) Any gifts and grants made to the fund or other money required by law to be deposited in the fund.
- (4) Any federal grants that are received to capitalize or supplement the fund.
- (5) Any earnings on money in the fund.

(c) The Indiana bond bank shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.

(d) The fund shall be used by the Indiana bond bank as a revolving fund. Money in the fund at the end of a state fiscal year does not revert to the state general fund.

Sec. 5. Subject to the requirements of this chapter, the Indiana bond bank may loan money from the fund to a school corporation to assist the school corporation in paying for:

- (1) the installation of a geothermal heating and cooling system in a new facility; or
- (2) the installation of a geothermal heating and cooling system that replaces a conventional heating and cooling system.

Sec. 6. (a) The Indiana bond bank shall establish a written procedure for providing loans from the fund to school corporations. The written procedure must include at least the following:

- (1) An application procedure.
- (2) A procedure to identify projects that may qualify for a loan.
- (3) Criteria for establishing the priority of projects for which loans will be made.

(4) Procedures for selecting projects for which loans will be made.

(b) To apply for a loan from the fund, a school corporation must submit an application that contains at least the following information:

(1) A description of the geothermal heating and cooling system that the school corporation proposes to install.

(2) An estimate of the cost of the geothermal heating and cooling system.

(3) An estimate of the amount by which the cost of installing the geothermal heating and cooling system exceeds the cost of installing a conventional heating and cooling system.

(4) Any other information required by the Indiana bond bank in accordance with the written procedures established under this section.

Sec. 7. The following apply to a loan from the fund to a school corporation under this chapter:

(1) The loan may not exceed the difference between:

(A) the cost of installing a geothermal heating and cooling system; minus

(B) the cost of installing a conventional heating and cooling system.

(2) The Indiana bond bank shall determine the interest rate and other terms for the loan.

(3) A school corporation must enter into a loan agreement with the Indiana bond bank before receiving a loan from the fund. The loan agreement is a valid, binding, and enforceable agreement between the school corporation and the Indiana bond bank. The loan agreement must contain the following terms:

(A) A requirement that the loan proceeds be used to pay for:

(i) the installation of a geothermal heating and cooling system in a new facility; or

(ii) the installation of a geothermal heating and cooling system that replaces a conventional heating and cooling system.

(B) The term of the loan, which may not be longer than fifteen (15) years after the date of the loan.

(C) The repayment schedule.

(D) The interest rate of the loan.

(E) Any other terms and provisions that the Indiana bond bank requires.

Sec. 8. A school corporation receiving a loan under this chapter shall repay the loan from:

(1) the school corporation's general fund; or

(2) the school corporation's capital projects fund.

Sec. 9. The Indiana bond bank shall annually present a report to the budget committee that describes the projects funded with loans under this chapter.

SECTION 3. IC 36-1-12-1, AS AMENDED BY P.L.168-2006,

SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) Except as provided in this section, this chapter applies to all public work performed or contracted for by:

- (1) political subdivisions; and
- (2) their agencies;

regardless of whether it is performed on property owned or leased by the political subdivision or agency.

(b) This chapter does not apply to an officer or agent who, on behalf of a municipal utility, maintains, extends, and installs services of the utility if the necessary work is done by the employees of the utility.

(c) This chapter does not apply to hospitals organized or operated under IC 16-22-1 through IC 16-22-5 or IC 16-23-1, unless the public work is financed in whole or in part with cumulative building fund revenue.

(d) This chapter does not apply to tax exempt Indiana nonprofit corporations leasing and operating a city market owned by a political subdivision.

(e) As an alternative to this chapter, the governing body of a ~~school corporation~~ **political subdivision or its agencies** may **do the following:**

(1) Enter into a design-build contract as permitted under IC 5-30.

(2) Participate in a utility efficiency program or may enter into a guaranteed savings contract as permitted under IC 36-1-12.5.

(f) This chapter does not apply to a person that has entered into an operating agreement with a political subdivision or an agency of a political subdivision under IC 5-23.

SECTION 4. IC 36-1-12.5-1, AS AMENDED BY P.L.168-2006, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) As used in this chapter, "conservation measure":

(1) means:

- (A) a ~~school~~ facility alteration;
- (B) an alteration of a structure (as defined in IC 36-1-10-2);
- (C) a technology upgrade; or
- (D) with respect to an installation described in subdivision (2)(G) or (2)(H), an alteration of a structure or system;

designed to provide billable revenue increases or reduce energy or water consumption costs, wastewater costs, or other operating costs; and

(2) includes the following:

- (A) Providing insulation of the ~~school~~ facility or structure and systems in the ~~school~~ facility or structure.
- (B) Installing or providing for window and door systems, including:
 - (i) storm windows and storm doors;
 - (ii) caulking or weatherstripping;
 - (iii) multi-glazed windows and doors;
 - (iv) heat absorbing or heat reflective glazed and coated windows and doors;
 - (v) additional glazing;

- 1 (vi) the reduction in glass area; and
- 2 (vii) other modifications that reduce energy consumption.
- 3 (C) Installing automatic energy control systems.
- 4 (D) Modifying or replacing heating, ventilating, or air
- 5 conditioning systems.
- 6 (E) Unless an increase in illumination is necessary to conform
- 7 to Indiana laws or rules or local ordinances, modifying or
- 8 replacing lighting fixtures to increase the energy efficiency of
- 9 the lighting system without increasing the overall illumination
- 10 of a facility or structure.
- 11 (F) Providing for other conservation measures that provide
- 12 billable revenue increases or reduce energy or water
- 13 consumption, reduce operating costs, or reduce wastewater
- 14 costs, including future:
 - 15 (i) labor costs;
 - 16 (ii) costs or revenues for contracted services; and
 - 17 (iii) related capital expenditures.
- 18 (G) Installing equipment upgrades that improve accuracy of
- 19 billable revenue generating systems.
- 20 (H) Installing automated, electronic, or remotely controlled
- 21 systems or measures that reduce direct personnel costs.
- 22 (b) The term does not include an alteration of a water or wastewater
- 23 structure or system that increases the capacity of the structure or
- 24 system.

25 SECTION 5. IC 36-1-12.5-5, AS AMENDED BY P.L.168-2006,
 26 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2009]: Sec. 5. (a) The governing body may enter into an
 28 agreement with a public utility to participate in a utility efficiency
 29 program or enter into a guaranteed savings contract with a qualified
 30 provider to increase the political subdivision's billable revenues or
 31 reduce the school corporation's or the political subdivision's energy or
 32 water consumption, wastewater usage costs, or operating costs if, after
 33 review of the report described in section 6 of this chapter, the
 34 governing body finds:

- 35 (1) in the case of conservation measures other than those that are
- 36 part of a project related to the alteration of a water or wastewater
- 37 structure or system, that the amount the governing body would
- 38 spend on the conservation measures under the contract and that
- 39 are recommended in the report is not likely to exceed the amount
- 40 to be saved in energy consumption costs and other operating costs
- 41 over ~~ten (10)~~ **twenty (20)** years from the date of installation if the
- 42 recommendations in the report were followed;
- 43 (2) in the case of conservation measures that are part of a project
- 44 related to the alteration of a water or wastewater structure or
- 45 system, that the amount the governing body would spend on the
- 46 conservation measures under the contract and that are
- 47 recommended in the report is not likely to exceed the amount of
- 48 increased billable revenues or the amount to be saved in energy
- 49 and water consumption costs, wastewater usage costs, and other
- 50 operating costs over ~~fifteen (15)~~ **twenty (20)** years from the date
- 51 of installation if the recommendations in the report were

followed; and

(3) in the case of a guaranteed savings contract, the qualified provider provides a written guarantee as described in subsection (d)(3).

(b) Before entering into an agreement to participate in a utility efficiency program or a guaranteed savings contract under this section, the governing body must publish notice under subsection (c) indicating:

(1) that the governing body is requesting public utilities or qualified providers to propose conservation measures through:

(A) a utility efficiency program; or

(B) a guaranteed savings contract; and

(2) the date, the time, and the place where proposals must be received.

(c) The notice required by subsection (b) must:

(1) be published in two (2) newspapers of general circulation in the county where the school corporation or the political subdivision is located;

(2) be published two (2) times with at least one (1) week between publications and with the second publication made at least thirty (30) days before the date by which proposals must be received; and

(3) meet the requirements of IC 5-3-1-1.

(d) An agreement to participate in a utility efficiency program or guaranteed savings contract under this section must provide that:

(1) in the case of conservation measures other than those that are part of a project related to the alteration of a water or wastewater structure or system, all payments, except obligations upon the termination of the agreement or contract before the agreement or contract expires, may be made to the public utility or qualified provider (whichever applies) in installments, not to exceed the lesser of ~~ten (10)~~ **twenty (20)** years or the average life of the conservation measures installed from the date of final installation;

(2) in the case of conservation measures that are part of a project related to the alteration of a water or wastewater structure or system, all payments, except obligations upon the termination of the agreement or contract before the agreement or contract expires, may be made to the public utility or qualified provider (whichever applies) in installments, not to exceed the lesser of ~~fifteen (15)~~ **twenty (20)** years or the average life of the conservation measures installed from the date of final installation;

(3) in the case of the guaranteed savings contract:

(A) the:

(i) savings in energy and water consumption costs, wastewater usage costs, and other operating costs; and

(ii) increase in billable revenues;

due to the conservation measures are guaranteed to cover the costs of the payments for the measures; and

(B) the qualified provider will reimburse the school corporation or political subdivision for the difference between the guaranteed savings and the actual savings; and

(4) payments are subject to annual appropriation by the fiscal body of the school corporation or political subdivision and do not constitute an indebtedness of the school corporation or political subdivision within the meaning of a constitutional or statutory debt limitation.

(e) An agreement or a contract under this chapter is subject to IC 5-16-7.

SECTION 6. IC 36-1-12.5-7, AS AMENDED BY P.L.168-2006, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) If the governing body enters into an installment payment contract for the purchase and installation of conservation measures under this chapter that are part of a project that is not related to the alteration of a water or wastewater structure or system, the balance of the payments must be paid in installments not to exceed the lesser of ~~ten (10)~~ **twenty (20)** years or the average life of the conservation measure installed from the date of final installation. Payments under an installment payment contract are subject to annual appropriation by the fiscal body of the school corporation or political subdivision and do not constitute an indebtedness of the school corporation or political subdivision within the meaning of a constitutional or statutory debt limitation.

(b) If the governing body enters into an installment payment contract for the purchase and installation of conservation measures under this chapter that are part of a project that is related to the alteration of a water or wastewater structure or system, the balance of the payments must be paid in installments not to exceed the lesser of ~~fifteen (15)~~ **twenty (20)** years or the average life of the conservation measure installed from the date of final installation. Payments under an installment payment contract are subject to annual appropriation by the fiscal body of the school corporation or political subdivision and do not constitute an indebtedness of the school corporation or political subdivision within the meaning of a constitutional or statutory debt limitation.

(c) With respect to a conservation measure described in section 1(a)(2)(G) or 1(a)(2)(H) of this chapter, annual revenues or savings from a guaranteed savings contract may be less than annual payments on the contract if during the length of the contract total savings and increased billable revenues occur as provided for by the contract.

(d) The financing of a guaranteed savings contract may be provided by:

- (1) the vendor under the guaranteed savings contract; or
- (2) a third party financial institution or company.

(Reference is to EHB 1669 as printed April 10, 2009.)

Conference Committee Report
on
Engrossed House Bill 1669

Signed by:

Representative Michael
Chairperson

Senator Gard

Representative Frizzell

Senator Errington

House Conferees

Senate Conferees